



BILLING CODE 8011-01p

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90556; File No. SR-NYSEArca-2020-101]

### **Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Streamline the NYSE Arca Equities Fees and Charges**

December 3, 2020

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”),<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on November 23, 2020, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### **I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to streamline the NYSE Arca Equities Fees and Charges (“Fee Schedule”) by deleting redundant rule text from Tier 1, Tier 2 and Tier 3 pricing tiers. The Exchange proposes to implement the fee changes effective November 23, 2020. The proposed rule change is available on the Exchange’s website at

---

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

[www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to streamline the Fee Schedule by deleting redundant rule text from Tier 1, Tier 2 and Tier 3 pricing tiers. The Exchange proposes to implement the fee changes effective November 23, 2020.

Currently, each of Tier 1, Tier 2 and Tier 3 pricing tiers provides fees and credits that ETP Holders<sup>4</sup> can qualify for if they meet the prescribed volume criteria.

Historically, in addition to the fees and credits applicable to each of Tier 1, Tier 2 and Tier 3 pricing tiers, each such tier also included the Basic Rates fees and credits. The Exchange believes this approach has caused more confusion than clarity and proposes to delete the redundant rule text that appears in Tier 1, Tier 2 and Tier 3. Each of the fees

---

<sup>4</sup> All references to ETP Holders in connection with this proposed fee change include Market Makers.

and credits proposed for deletion currently appear under the Basic Rates section of the Fee Schedule and would continue to apply to ETP Holders for their activity that falls outside of Tier 1, Tier 2 and Tier 3, as applicable. The Exchange is not proposing any change to the fees and credits applicable to ETP Holders other than to delete redundant text from Tier 1, Tier 2 and Tier 3.

Under Tier 1, ETP Holders that provide liquidity an average daily share volume per month of 0.70% or more of the US consolidated average daily volume (“US CADV”)<sup>5</sup> pay a fee of \$0.0030 per share for orders, including Primary Only (“PO”) Orders, routed to any away market that remove liquidity in Tape A, Tape B and Tape C securities, and receive a credit of \$0.0031 per share for orders that provide liquidity in Tape A securities, \$0.0023 per share in Tape B securities,<sup>6</sup> and \$0.0032 per share in Tape C securities. Additionally, ETP Holders that qualify for Tier 1 also pay a fee of \$0.0010 per share for Market, Market-On-Close, Limit-On-Close, and Auction-Only Orders executed in a Closing Auction. All other fees and credits under Tier 1 are identical to the fees and credits provided under the Basic Rates section of the Fee Schedule. The Exchange is not proposing to adopt any new fees or credits or remove any current fees or

---

<sup>5</sup> US CADV means United States Consolidated Average Daily Volume for transactions reported to the Consolidated Tape, excluding odd lots through January 31, 2014 (except for purposes of Lead Market Maker pricing), and excludes volume on days when the market closes early and on the date of the annual reconstitution of the Russell Investments Indexes. Transactions that are not reported to the Consolidated Tape are not included in US CADV. See Fee Schedule, footnote 3.

<sup>6</sup> Pursuant to the LMM Transaction Fees and Credits pricing program, ETP Holders affiliated with LMMs can receive an additional credit when such ETP Holders provide displayed liquidity to the Book based on the number of Less Active ETP Securities in which the LMM is registered as the LMM. See Securities Exchange Act Release No. 87978 (January 15, 2020), 85 FR 3727 (January 22, 2020) (SR-NYSEArca-2020-03).

credits under Tier 1 with this proposed rule change.

Accordingly, the Exchange proposes to delete the following fees and credits applicable to Tape A and Tape C securities under Tier 1 of the Fee Schedule, all of which currently appear under Basic Rates on the Fee Schedule:

- \$0.0030 per share (fee) for orders that take liquidity from the Book for Tape A Securities and Tape C Securities.
- For Mid-Point Liquidity (“MPL”) orders providing liquidity to the Book:
  - \$0.0015 per share (credit) in Tape A Securities and \$0.0020 per share (credit) in Tape C Securities if provided liquidity in MPL Orders for Tape A, Tape B and Tape C Securities combined (“MPL Adding ADV”) during the billing month is at least 3 million shares;
  - \$0.0015 per share (credit) in Tape A Securities and Tape C Securities if MPL Adding ADV during the billing month is at least 1.5 million shares and less than 3 million shares;
  - \$0.0010 per share (credit) in Tape A and Tape C Securities.
- \$0.0030 per share (fee) for MPL orders removing liquidity from the Book that are not designated as “Retail Orders” defined below.
- \$0.0010 per share (fee) for MPL orders removing liquidity from the Book and are designated as “retail” that meet the requirements of Rule 7.44-E(a)(3) but that are not executed in the Retail Liquidity Program (“Retail Orders”).
- \$0.0015 per share (fee) for Market and Auction-Only Orders executed in

an Early Open Auction, Core Open Auction or Trading Halt Auction, capped at \$20,000 per month per Equity Trading Permit ID.

- No fee or credit for Limit Non-Displayed Orders that provide liquidity to the Book.
- \$0.0030 per share (fee) for Limit Non-Displayed Orders that take liquidity from the Book.

Additionally, the Exchange proposes to delete the following fees and credits applicable to Tape A securities under Tier 1 of the Fee Schedule:

- \$0.0012 per share (credit) for PO Orders that provide liquidity to the NYSE.
- \$0.0010 per share (fee) for PO Orders routed to the NYSE that execute in the opening or closing auction.

Finally, under Tier 1, the Fee Schedule currently provides for a fee of \$0.0029 per share for orders in Tape B securities that take liquidity from the Book, and a fee of \$0.0029 per share for Limit Non-Displayed Orders that take liquidity from the Book. The Exchange proposes to merge these two fees into a single fee by adding the words “including Limit Non-Displayed Limit Orders” to the former fee and deleting the text of the latter from the Fee Schedule. In addition, similar to the statement that currently appears at the end of Tier 3 of the Fee Schedule, the Exchange proposes to add the words “For all other fees and credits, Basic Rates apply” at the end of Tier 1 to clarify that the rates that are proposed for deletion would continue to apply to ETP Holders that qualify for Tier 1 for all of their other trading activity. The Exchange also proposes to delete the following fees and credits applicable to Tape B securities under Tier 1 as each are

duplicative and currently appear under Basic Rates:

- No per share (credit) for PO orders routed to NYSE American that provide liquidity to the NYSE American Book.
- MPL orders providing liquidity to the Book:
  - \$0.0020 per share (credit) if MPL Adding ADV during the billing month is at least 3 million shares;
  - \$0.0015 per share (credit) if MPL Adding ADV during the billing month is at least 1.5 million shares and less than 3 million shares;
  - \$0.0010 per share (credit) if MPL Adding ADV during the billing month is less than 1.5 million shares.
- \$0.0030 per share (fee) for MPL orders removing liquidity from the Book that are not designated as Retail Orders.
- \$0.0010 per share (fee) for MPL orders removing liquidity from the Book that are designated as Retail Orders.
- \$0.0015 per share (fee) for Market and Auction-Only Orders executed in an Early Open Auction, Core Open Auction or Trading Halt Auction, capped at \$20,000 per month per Equity Trading Permit ID.
- \$0.0005 per share (fee) for PO Orders routed to NYSE American that execute in the opening or closing auction.
- No fee or credit for Limit Non-Displayed Orders that provide liquidity to the Book.

Under Tier 2, ETP Holders can qualify for the applicable fees and credits in one of two ways. ETP Holders can either provide liquidity an average daily share volume per

month of 0.30% or more, but less than 0.70% of the US CADV. Alternatively, ETP Holders can (a) provide liquidity an average daily share volume per month of 0.25% or more, but less than 0.70% of the US CADV, (b) execute removing volume in Tape B Securities equal to at least 0.40% of US Tape B CADV, and (c) maintain affiliation with an OTP Holder or OTP Firm that provides an ADV of electronic posted Customer and Professional Customer executions in all issues on NYSE Arca Options (excluding mini options) of at least 0.25% of total Customer equity and ETF option ADV as reported by OCC.

ETP Holders that qualify for Tier 2 pay a fee of \$0.0030 per share for orders, including PO Orders, routed to any away market that remove liquidity in Tape A, Tape B and Tape C securities, and receive a credit of \$0.0029 per share for orders that provide liquidity in Tape A and Tape C securities,<sup>7</sup> and \$0.0022 per share for orders that provide liquidity in Tape B securities.<sup>8</sup> All other fees and credits under Tier 2 are identical to the fees and credits provided under the Basic Rates section of the Fee Schedule. The

---

<sup>7</sup> Under Tier 2, ETP Holders can alternatively qualify for a credit of \$0.0031 per share for orders in Tape A and Tape C securities that provide displayed liquidity if such ETP Holder meets the requirements of Tier 2 and, (1) executes providing volume equal to at least 0.30% of US CADV, (2) executes removing volume equal to at least 0.285% of US CADV, and (3) executes Market-On-Close and Limit-On-Close Orders executed in a Closing Auction of at least 0.075% of US CADV.

<sup>8</sup> Under Tier 2, ETP Holders can alternatively qualify for a credit of \$0.0024 per share for orders in Tape B securities that provide displayed liquidity if such ETP Holder meets the requirements of Tier 2 and, (1) executes providing volume equal to at least 0.30% of US CADV, (2) executes removing volume equal to at least 0.285% of US CADV, and (3) executes Market-On-Close and Limit-On-Close Orders executed in a Closing Auction of at least 0.075% of US CADV. Pursuant to the LMM Transaction Fees and Credits pricing program, ETP Holders affiliated with LMMs can receive an additional credit when such ETP Holders provide displayed liquidity to the Book in Tape B securities based on the number of Less Active ETP Securities in which the LMM is registered as the LMM.

Exchange is not proposing to adopt any new fees or credits or remove any current fees or credits under Tier 2 with this proposed rule change.

Accordingly, the Exchange proposes to delete the following fees and credits applicable to Tape A and Tape C securities under Tier 2 of the Fee Schedule, all of which currently appear under Basic Rates on the Fee Schedule:

- \$0.0030 per share (fee) for orders that take liquidity from the Book.
- For Mid-Point Liquidity (“MPL”) orders providing liquidity to the Book:
  - \$0.0015 per share (credit) in Tape A Securities and \$0.0020 per share (credit) in Tape C Securities if provided liquidity in MPL Orders for Tape A, Tape B and Tape C Securities combined (“MPL Adding ADV”) during the billing month is at least 3 million shares;
  - \$0.0015 per share (credit) in Tape A Securities and Tape C Securities if MPL Adding ADV during the billing month is at least 1.5 million shares and less than 3 million shares;
  - \$0.0010 per share (credit) in Tape A and Tape C Securities.
- \$0.0030 per share (fee) for MPL orders removing liquidity from the Book that are not designated as “Retail Orders” defined below.
- \$0.0010 per share (fee) for MPL orders removing liquidity from the Book that are designated Retail Orders.
- \$0.0015 per share (fee) for Market and Auction-Only Orders executed in an Early Open Auction, Core Open Auction or Trading Halt Auction, capped at \$20,000 per month per Equity Trading Permit ID.



- No fee or credit for Limit Non-Displayed Orders that provide liquidity to the Book.
- \$0.0030 per share (fee) for Limit Non-Displayed Orders that take liquidity from the Book.

Additionally, the Exchange proposes to delete the following fees and credits applicable to Tape A securities under Tier 2 of the Fee Schedule:

- \$0.0012 per share (credit) for PO Orders that provide liquidity to the NYSE.
- \$0.0010 per share (fee) for PO Orders routed to the NYSE that execute in the opening or closing auction.

Finally, under Tier 2, the Fee Schedule currently provides for a fee of \$0.0029 per share for orders in Tape B securities that take liquidity from the Book, and a fee of \$0.0029 per share for Limit Non-Displayed Orders that take liquidity from the Book. The Exchange proposes to merge these two fees into a single fee by adding the words “including Limit Non-Displayed Limit Orders” to the former fee and deleting the text of the latter from the Fee Schedule. In addition, similar to the statement that currently appears at the end of Tier 3 of the Fee Schedule, the Exchange proposes to add the words “For all other fees and credits, Basic Rates apply” at the end of Tier 2 to clarify that the rates that are proposed for deletion would continue to apply to ETP Holders that qualify for Tier 2 for all of their other trading activity. The Exchange also proposes to delete the following fees and credits applicable to Tape B securities under Tier 2 as each are duplicative and currently appear under Basic Rates:

- No per share (credit) for PO orders routed to NYSE American that provide

liquidity to the NYSE American Book.

- MPL orders providing liquidity to the Book:
  - \$0.0020 per share (credit) if MPL Adding ADV during the billing month is at least 3 million shares;
  - \$0.0015 per share (credit) if MPL Adding ADV during the billing month is at least 1.5 million shares and less than 3 million shares;
  - \$0.0010 per share (credit) if MPL Adding ADV during the billing month is less than 1.5 million shares.
- \$0.0030 per share (fee) for MPL orders removing liquidity from the Book that are not designated as Retail Orders.
- \$0.0010 per share (fee) for MPL orders removing liquidity from the Book that are designated as Retail Orders.
- \$0.0015 per share (fee) for Market and Auction-Only Orders executed in an Early Open Auction, Core Open Auction or Trading Halt Auction, capped at \$20,000 per month per Equity Trading Permit ID.
- \$0.0005 per share (fee) for PO Orders routed to NYSE American that execute in the opening or closing auction.
- No fee or credit for Limit Non-Displayed Orders that provide liquidity to the Book.

Under Tier 3, ETP Holders that provide liquidity an average daily share volume per month of 0.20% or more, but less than 0.30% of the US CADV pay a fee of \$0.0030 per share for orders, including PO Orders, routed to any away market that remove liquidity in Tape A, Tape B and Tape C securities, and receive a credit of \$0.0025 per

share for orders that provide liquidity in Tape A and Tape C securities,<sup>9</sup> or and \$0.0022 per share in Tape B securities.<sup>10</sup> Additionally, ETP Holders that qualify for Tier 3 also pay a fee of \$0.0010 per share for Market, Market-On-Close, Limit-On-Close, and Auction-Only Orders executed in a Closing Auction. All other fees and credits under Tier 3 are identical to the fees and credits provided under the Basic Rates section of the Fee Schedule. The Exchange is not proposing to adopt any new fees or credits or remove any current fees or credits under Tier 3 with this proposed rule change.

Accordingly, the Exchange proposes to delete the following fees and credits applicable to Tape A and Tape C securities under Tier 3 of the Fee Schedule, all of which currently appear under Basic Rates on the Fee Schedule:

- \$0.0030 per share (fee) for orders that take liquidity from the Book.
- No fee or credit for Limit Non-Displayed Orders that provide liquidity to the Book.
- \$0.0030 per share (fee) for Limit Non-Displayed Orders that take liquidity from the Book.

Additionally, the Exchange proposes to delete the following fee applicable to Tape A securities under Tier 3 of the Fee Schedule:

---

<sup>9</sup> Under Tier 3, ETP Holder can also receive a credit of \$0.0027 per share for orders in Tape A and Tape C securities if the ETP Holder meets the requirements of Tier 3 and its ADV of executed orders that provide liquidity is at least 0.05% of US CADV more than the ETP Holder's ADV of executed orders that provide liquidity as a percent of US CADV in May 2019.

<sup>10</sup> Pursuant to the LMM Transaction Fees and Credits pricing program, ETP Holders affiliated with LMMs can receive an additional credit when such ETP Holders provide displayed liquidity to the Book based on the number of Less Active ETP Securities in which the LMM is registered as the LMM.

- \$0.0010 per share (fee) for PO Orders routed to the NYSE that execute in the opening or closing auction.

Finally, under Tier 3, the Fee Schedule currently provides for a fee of \$0.0029 per share for orders in Tape B securities that take liquidity from the Book, and a fee of \$0.0029 per share for Limit Non-Displayed Orders that take liquidity from the Book. The Exchange proposes to merge these two fees into a single fee by adding the words “including Limit Non-Displayed Limit Orders” to the former fee and deleting the text of the latter from the Fee Schedule. The Exchange also proposes to delete the following fees and credits applicable to Tape B securities under Tier 3 as it is duplicative and currently appears under Basic Rates:

- No fee or credit for Limit Non-Displayed Orders that provide liquidity to the Book.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any significant problems that market participants would have in complying with the proposed changes.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>11</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>12</sup> in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

---

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(4) and (5).

The Exchange believes that the proposed rule change to streamline the Fee Schedule by deleting redundant rule text is reasonable because each of the fees and credits proposed for deletion currently appear under the Basic Rates section of the Fee Schedule which is the more appropriate place for such fees and credits. The Exchange believes providing the base rates under the Basic Rates section of the Fee Schedule would promote clarity to the Fee Schedule and reduce confusion to ETP Holders as to which fees and credits are applicable to their trading activity on the Exchange. The Exchange believes it is reasonable to delete the redundant fees and credits from Tier 1, Tier 2 and Tier 3 of the Fee Schedule and therefore, streamline the Fee Schedule to promote clarity and reduce confusion as to the applicability of fees and credits that ETP Holders would be subject to. The Exchange believes deleting redundant fees and credits would also simplify the Fee Schedule. The Exchange believes that deleting redundant fees and credits from Tier 1, Tier 2 and Tier of the Fee Schedule is equitable and not unfairly discriminatory because the resulting streamlined Fee Schedule would continue to apply to ETP Holders as it does currently because the Exchange is not adopting any new fees or credits or removing any current fees or credits from the Fee Schedule. All ETP Holders would continue to be subject to the same fees and credits that currently apply to them.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,<sup>13</sup> the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary

---

<sup>13</sup> 15 U.S.C. 78f(b)(8).

or appropriate in furtherance of the purposes of the Act.

*Intramarket Competition.* The Exchange's proposal to delete redundant fees and credits from Tier 1, Tier 2 and Tier 3 of the Fee Schedule will not place any undue burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because all ETP Holders would continue to be subject to the same fees and credits that currently apply to them. To the extent the proposed rule change places a burden on competition, any such burden would be outweighed by the fact that a streamlined Fee Schedule would promote clarity and reduce confusion with respect to the fees and credits that ETP Holders would be subject to.

*Intermarket Competition.* The Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchanges and off-exchange venues if they deem fee levels at those other venues to be more favorable. Market share statistics provide ample evidence that price competition between exchanges is fierce, with liquidity and market share moving freely from one execution venue to another in reaction to pricing changes.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section

19(b)(3)(A)<sup>14</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>15</sup> thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>16</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2020-101 on the subject line.

---

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(2).

<sup>16</sup> 15 U.S.C. 78s(b)(2)(B).

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange

Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2020-101. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2020-101, and should be submitted on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.



For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2020-26990 Filed: 12/8/2020 8:45 am; Publication Date: 12/9/2020]

---

<sup>17</sup> 17 CFR 200.30-3(a)(12).